HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.22230 of 2005

18-10-2005

Between:

D. Shobha Rani

…Petitioner

And

Government of Andhra Pradesh

Rep. By Prl. Secretary,

Municipal Administration & Urban Development

Secretariat Buildings, Hyderabad and others

…Respondents.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.22230 of 2005

O R D E R :

The petitioner purchased three mulgies(shops) in an apartment block, namely Badruka Enclave Apartments. The second respondent herein issued a notice under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (for brevity 'the Act') informing that the petitioner made unauthorized construction of shops in the front set back of the building at Cellar Floor and accordingly she was asked to show cause in writing as to why the unauthorized construction should not be removed so as to bring it in conformity with the sanctioned plan. It was also alleged that the petitioner violated Sections 428 and 433 of the Act and the Rules framed in G.O.Ms.No.423. The petitioner submitted her explanation mainly contending that the three shops she purchased from M/s. Badruka Enclave apartments are approved in the sanctioned plan, and therefore, there is no unauthorized construction. Considering the representation, on 3-10-2005 the second respondent issued notice/order under Section 636 of the Act, directing the petitioner to remove/demolish the unauthorized construction. Assailing the same, the present writ petition is filed.

Learned counsel for the petitioner Sri K.S.Murthy strenuously contended that when the three shops purchased by the petitioner are approved in the sanctioned plan, the conclusion of the second respondent that the petitioner made unauthorized construction is improper and irrational. He also produced before this Court a xerox copy of the sanctioned plan in respect of premises No.8-2-683/A.

The allegation made against the petitioner in the notice issued under Section 452 of the Act is that she made unauthorized construction of shops in the front set back of the building at Cellar Floor. The xerox copy of the sanctioned plan would show that these shops are no doubt a little away from the set back area. But it cannot definitely be said from a perusal of the sanctioned plan as to what is the exact set back area for the three apartment blocks, which were admittedly constructed therein. Secondly, the three shops were constructed at the Cellar Floor, which was meant for parking. In any view of the matter, this is a question of fact, which cannot be decided in this writ petition. It would certainly be a violation of the law to make any constructions in front of the Cellar Floor even if it is not in the set back area.

For the above reasons, the writ petition is misconceived and the same is accordingly dismissed.

_____

(V.V.S. RAO, J)

18-10-2005.

Msr.